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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5811 OF 2006
WITH
WRIT PETITION NO. 5812 OF 2006
WITH
WRIT PETITION NO. 5813 OF 2006

1. Tata Motors Limited,
(Formerly known as Tata Engineering &
Locomotive Company Limited), a company
registered under the companies Act,
1956, having its Registered office
at Bombay House, 24, Homi Mody Street,
Fort, Mumbai 400 001 and one of its
factory at Pimpri, Pune 411 018.

2. Mr. Sunil D. Pundlik,
Indian Inhabitant and residing at
C-II-3, Tata Housing Centre,
Lallubhai Park Road, Andheri (W),
Mumbai 400 058. ... Petitioners

Versus

1. Pimpri Chihchwad Municipal
Corporation, a statutory Corporation
under the provisions of the :BOmbay
Provincial Municipal Corporations
Act, 1949 and having its office at
Pimpri, Pune 411 018.

2. Assistant Zonal Officer,
Chikhali Zonal Office,
Pimpri Chinchwad Municipal
Corporation, Chikhali, Pune.

3. Assessor & Collector of Taxes,
Administrative Officer,
Tax Collection Department,
Pimpri Chinchwad Municipal
Corporation, Pimpri Chinchwad
Municipal Corporation, Pimpri,
Pune 411 018.

4. The State of Maharashtra,
Through the Additional Government
Pleader. ... Respondents

ALONG WITH
WRIT PETITION NO. 5830 OF 2006

Pudumjee Pulp & Paper Mills Limited,

Registered Office : Thergaon,
Chinchwad, Pune 411 033. ... Petitioner

Versus

1. Pimpri Chinchwad Municipal
Corporation, a statutory Corporation
under the provisions of the Bombay
Provincial Municipal Corporations
Act, 1949

2. Assistant Circle Officer,
Thergaon Divisional Office,
Thergaon, Chinchwad,
Pune.

3. Assessor & Collector of Taxes,
Administrative Officer,
Tax Collection Department,
Pimpri Chinchwad Municipal
Corporation, Pimpri Chinchwad
Municipal Corporation, Pimpri,
Pune 411 018.

4. The State of Maharashtra, ... Respondents

Mr. A.K. Abhyankar, Sr. Advocate with Mr. P.S. Dani, Mr. A.V. Doshi, Mr. H.N. Vakil and Mr. D.D. Mehta i/by Mulla & Mulla & C.B. & Craige for Petitioners in Writ Petition No. 5811 of 2006, 5812 of 2006 and 5813 of 2006.

Mr.A.K. Abhyankar, Sr. Advocate with Mr. N.V. Mhatre for Petitioner in W.P. No. 5830 of 2006.

Mr. N.V. Walavalkar, Sr. Advocate with Mr. Deepak More and Mr. Sudhir Prabhu for R. Nos. 1 to 3 in Writ Petition Nos. 5811 and 5813 of 2006.

Mr. N.V. Walavalkar, Sr. Advocate with Mr. Deepak More and Mr. G.H. Keluskar for R. Nos. 1 to 3 in W.P. No. 5812 of 2006.

Mr. D.R. More for R. Nos. 1 to 3 in W.P. No. 5830 of 2006.

Mr. R.D. Rane, Government Pleader for R. No. 4.

CORAM: F.I. REBELLO &
R.V. MORE,JJ.
DATED: JANUARY 24, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

. The Petitioners in all these petitions are assailing the demand of property Tax. The contention of the Petitioners in all these petitions are that the demand as made is arbitrary and illegal for the following reasons :

(1) The property has already been assessed for rateable value and once that exercise is completed, it is not open to the respondent Corporation to once again alter the rateable value of the property.

(2) It is secondly submitted, that once the building is taxed, the land cannot be taxed separately.

(3) The demand as made on the Petitioner is illegal.

. These are the major contentions raised in the present petition.

2. The Respondent corporation has filed its reply and has raised preliminary objections to the maintainability of the Petition. It is firstly, contended that the Petition as filed under Article 226 of the Constitution is not maintainable as the Petitioner has alternate and equally efficacious and complete remedy by way of municipal appeal under Section 406 of the Bombay Provincial Municipal Corporation Act, 1949 (which hereinafter shall be

referred to as the Act) which the Petitioners are entitled to avail of.

. Secondly, the present writ petition involves several disputed questions of fact which would require leading of evidence by the parties in support of the respective cases and in these circumstances, the Petitioners have to seek remedy by way of filing appeal under the provisions of the B.P.M.C. Act, 1949 (hereinafter referred to as "Act").

. In answer to these contentions, on behalf of the Petitioners, their learned counsel submits that an appeal under Section 406 of the Act is limited to the rateable value or tax fixed. An appeal would not be maintainable where the petition questions the validity and legality of the tax. The contentions as urged on behalf of the Petitioners are contentions pertaining to the legality and validity of the tax and in these circumstances as no appeal is available the petition as filed is maintainable. The learned counsel has relied on various judgments which we shall advert to in the course of our discussion.

. We shall first deal with the preliminary

objections. Reference may be made to some provisions of the Act. Section 127 of the Act confers power on the Corporation to impose tax which include property tax. section 2(49) defines property tax to mean tax on building and the land in the city. Land has been defined under Section 2(30) and includes land which is being built upon or covered with water, benefits arising out of land, things attached to the earth or permanently fastened to anything attached to the earth and rights created by legislative enactment over any street. Considering these provisions we shall now consider the judgments and the preliminary objections as raised.

. In Municipal Council of Ankaleshwar Versus Chhotalal Ghelabhai Gandhi LVII (1954) B.L.R. 547, the learned Division Bench of this court was considering the provisions of Section 86 of the Bombay District Municipal Act. Section 86 is the provision for appeal in the matters arising amongst others of fixation of rates of the buildings and lands. It was submitted that the scope of appeal and revision is confined to the determination of the correctness of the valuation and the assessment only. Considering that contention and the right to file appeal, the learned Division Bench observed as under :

> "It would thus appear that the appeal under s. 86 is with respect to the valuation and assessment with respect to which objections are heard and disposed of under s. 65..."

. Proceeding further the learned Division Bench observed that the appeal is confined to the valuation and assessment shown in the entry in the assessment list and to the tax, i.e.the quantum of the sum claimed in the bill and to no other matters. The court then observed that if the appeal is restricted to the grounds contained in the application under s. 65, a question would arise whether the validity of a tax can be raised in an objections taken under s. 65 of the Act. The court observed that the objections are confined to the valuation and assessment and not to the validity or the legality of the tax.

. In Balkrishna Dharamdas Vora Vs. The Poona municipal Corporation 1962 A.C.J. 119, another learned Division Bench was considering also whether the suit was maintainable considering the statutory remedy of appeal under Section 406(1) of the B.P.M.C. Act, 1949. The learned Division Bench was pleased to hold as under :

> "However, the words used in s. 406(l) of the Act, in our view do not cover the vires of the tax or the legality of the tax which is sought to be levied. It provides for appeals against rateable value or tax fixed or charged and, in our view, looking to the general scheme of the Act, by the words "tax fixed or charged" what was meant was the amount or quantum of tax and not the legality of the same."

. The learned Bench then observed, that finality is given only to decisions regarding the rateable value and the amount of tax and not to any other matter that the Commissioner may incidentally decide.

. Next reliance was placed in the judgment of Municipal Council, Morshi Versus Tulsiram Vishwanath Gadbail 1977 Mah. L.J. 735. The issue therein was the scope of the appeal under Section 169 of the Maharashtra Municipalities Act. After considering various judgments including those refererd to earlier, the learned Division Bench was pleased to hold, that in appeal under Section 169 it is not open to the party to raise questions of validity and legality of the tax. The court observed that proceedings under Section 65 of the Bombay District Municipality Act as to the validity of tax cannot be

urged in an appeal under section 169 which is confined to the valuation and assessment and not to the validity or legality of the tax.

. Next reliance was placed on the judgment in New Manek Chowk Spinning and Weaving Mills Co. Ltd. and Ors. Versus Municipal Corporation of the City of Ahmedabad and Others 1967 2 S.C.R. 679. The principal issue was the method of valuation to be adopted. One of the contentions which was urged was that, after the tax has become leviable under the Rules, the assessee is entitled, if he so desires, to file an appeal under s. 406 against either the rateable value or the tax fixed or charged under the Act. Answering this contention, the Hon’ble Supreme Court held that in effect, the Act and the appeal rules do not make any provision for relief to an assessee who complains that the assessment book has been prepared in violation of the law.

. In Dr. Balbirsingh and others Vs. M/s. M.C.D. and Others (1985) 1 Supreme Court Cases 167, the issue again was determination of rateable value. One other question was the fixation of ratable value where the property has been constructed in stages. Answering the same, the Apex Court held that when the premises has been assessed for rateable value, the assessing authority would have to determine the

standard rent of the premises bearing in mind the provisions. If any addition is made to the premises in a subsequent stage, the situations which may arise were set down. The Supreme Court then observed as under :

> "The assessing authorities, cannot determine the standard rent of the additional structure by taking the reasonable cost of construction of the additional structure and adding to it the market price of the land and applying the statutory percentage of 7.1/2 to the aggregate amount. The market price of the land cannot be added twice over, once while determining the standard rent of the original structure and again while determining the standard rent of the additional structure....."

. In other words the Supreme Court held that if there be any additional structure, the market price of the land cannot be added twice, if any additional structure has been added and if the land has already been assessed, while considering the structures existing at the time of assessment.

. In Common Cause Registered Society Versus Union of India and Others, AIR 1987 S.C. 2211 the

principle in Balbirsingh (supra) was reiterated. In Municipal Corporation of Delhi Versus M/s. Express Newspaper Ltd. AIR 1998 S.C. 2945, it was again held relying upon Balbirsingh (supra) that once the assessment has been done, taking the valuation of the land, in case of any additions, it was not open once again considering the rateable value of the land.

3. On the other hand on behalf of the respondent Corporation, their learned counsel relied on the judgment of the learned Division Bench in Wandleside National Conductors Ltd. Versus Municipal Corporation for the city of Pune and Others, 1989 Mh.L.J. 755. This was in the matter of octroi. The question was whether the appeal was available under Section 406. While deciding the controversy, the court observed :

> "Even if both the clauses are reads together the position remains intact that the aggrieved party has a right to appeal against any tax so charged under the Act and such an appeal becomes maintainable in law under sub clause (1)....."

. Next reliance was placed in Filmstan Private Limited Vs. the Municipal Commissioner for Greater

Bombay 1969 (LXXII) B.L.R. 461. The issue was of how the rateable value to be fixed in localities governed by Rent Control Act.

. Reliance was then placed in Municipal Corporation of Greater Mumbai and another Vs. Kamla Mills Ltd. (2003) 6 Supreme Court Cases 315 to points out that the burden of proof to show the correct rateable value would be that of the party who files the objections. In that case, the issue arose from the construction of new buildings after demolition of the old building which had been assessed to municipal tax.

4. In our opinion, the questions raised really cannot be said to prima facie raise the issues as to legality and validity of the Tax. A close scrutiny would indicate that what the petitioners contend is that once property is assessed to tax and rateable value assessed, it cannot once again be altered or while fixing the rateable value in respect of the land on which the building stood, it was not open in the case of additions of structures to once again consider the value of the land.

. The respondents have contended that while earlier whilst fixing rateable value, the valuation of the

open land was not considered. in Writ Petition No. 5811 of 2006, the total area of land is 180 acrs. In Writ Petition No. 5812 of 2006 it is about 400 acrs. In Writ Petition No. 5813 of 2006 it is about 100 acres and in Writ Petition No. 5830 of 2006 it is about 244384.613. sq. mtrs. The issue as to whether while entering the assessment in the register maintained the valuation of the open land was considered while fixing the rateable value is a question of fact. The Petitioners have been unable to produce any conclusive evidence documentary or otherwise that in fact the value of the entire land had been considered while fixing rateable value and not only the value of the land on which the structures stood. Petitioner’s contend that the respondent has failed to produce documents to show that he value of the land was not taken into consideration. The respondents have produced some documents and contended that the value of the land had not been taken into consideration whilst fixing rateable value and it is in that light considering Chapter VIII of the B.P.M.C. Act, 1949, read with Rule 15(2) and Rule 20(2), that they are seeking to amend the entries in the assessment book. There can be no dispute that there is power in the Respondent. The Petitioners in fact had come to the court earlier by way of Writ petition one of them being Writ Petition No. 1848 of 2002 to challenge the

notice issued. By order dated 6.2.2004 , the Petitions were disposed of. By that order, the notice issued to was held to be notice calling for explanation which is a prerequisite for determining the tax and the Petitioners could file their complaints or objections to the proposed rateable value. The Petitioners filed their objection and the impugned order was passed after hearing the parties which is the subject matter of the present petition.

. We are clearly of the opinion that the petition raises disputed questions of fact. Evidence will have to be lead to decide the issue as to whether earlier in fact the open land was valued while fixing the rateable value. That exercise cannot be done in the exercise of our extra ordinary jurisdiction and it would be left to the parties to choose whatever forum, be it an appeal or suit to decide the issues which has been raised in the present writ Petition.

. Considering that there is an interim stay, that interim stay to continue for a further period of eight weeks from today.

. With the above observations, Petitions stand disposed of.

(R.V. MORE,J.) **(F.I.REBELLO, J.)**